

HOUSE BILL NO. 202

INTRODUCED BY C. HARRIS

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE WATER QUALITY LAWS BY EXPANDING THE DEFINITION OF "INTERESTED PERSON"; PROVIDING THAT AN INTERESTED PERSON MAY APPEAL THE FINAL DECISION TO ISSUE OR MODIFY A DISCHARGE PERMIT; ELIMINATING THE REQUIREMENT THAT A HEARING MUST BE HELD WITHIN 30 DAYS; AND AMENDING SECTIONS 75-5-103 AND 75-5-403, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 75-5-103, MCA, is amended to read:

**"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(5) (a) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter.

(b) The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(6) "Department" means the department of environmental quality provided for in 2-15-3501.

(7) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(8) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of

1 chemical, physical, biological, and other constituents that are discharged into state waters.

2 (9) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether  
3 or not those uses are included in the water quality standards.

4 (10) "High-quality waters" means all state waters, except:

5 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by  
6 the board's classification rules; and

7 (b) surface waters that:

8 (i) are not capable of supporting any one of the designated uses for their classification; or

9 (ii) have zero flow or surface expression for more than 270 days during most years.

10 (11) "Impaired water body" means a water body or stream segment for which sufficient credible data  
11 shows that the water body or stream segment is failing to achieve compliance with applicable water quality  
12 standards.

13 (12) "Industrial waste" means a waste substance from the process of business or industry or from the  
14 development of any natural resource, together with any sewage that may be present.

15 (13) "Interested person" means a person who has a real property interest, a water right, or an economic  
16 interest that is or may be directly and adversely affected by the department's ~~preliminary~~ final decision regarding  
17 degradation of state waters, pursuant to 75-5-303, or the department's final decision to issue or modify a permit,  
18 pursuant to 75-5-403. The term includes a person who has requested authorization to degrade high-quality  
19 waters, a permit applicant, or a permit holder.

20 (14) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one  
21 of its existing or future nonpoint sources or to natural background sources.

22 (15) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a  
23 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the  
24 maximum change that can occur from the best practicable condition in a surface water without causing a  
25 violation of the surface water quality standards.

26 (16) "Local department of health" means the staff, including health officers, employed by a county, city,  
27 city-county, or district board of health.

28 (17) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium,  
29 cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and  
30 zinc.

1 (18) "Mixing zone" means an area established in a permit or final decision on nondegradation issued  
2 by the department where water quality standards may be exceeded, subject to conditions that are imposed by  
3 the department and that are consistent with the rules adopted by the board.

4 (19) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime,  
5 sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded  
6 equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

7 (20) "Outstanding resource waters" means:

8 (a) state surface waters located wholly within the boundaries of areas designated as national parks or  
9 national wilderness areas as of October 1, 1995; or

10 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and  
11 approved by the legislature.

12 (21) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point  
13 source.

14 (22) "Parameter" means a physical, biological, or chemical property of state water when a value of that  
15 property affects the quality of the state water.

16 (23) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
17 partnership, individual, or other entity and includes persons resident in Canada.

18 (24) "Point source" means a discernible, confined, and discrete conveyance, including but not limited  
19 to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other  
20 floating craft, from which pollutants are or may be discharged.

21 (25) (a) "Pollution" means:

22 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters  
23 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating  
24 to change in temperature, taste, color, turbidity, or odor; or

25 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other  
26 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or  
27 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other  
28 wildlife.

29 (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge  
30 permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed

1 by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this  
2 chapter.

3 (26) "Sewage" means water-carried waste products from residences, public buildings, institutions, or  
4 other buildings, including discharge from human beings or animals, together with ground water infiltration and  
5 surface water present.

6 (27) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other  
7 wastes to an ultimate disposal point.

8 (28) "Standard of performance" means a standard adopted by the board for the control of the discharge  
9 of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best  
10 available demonstrated control technology, processes, operating methods, or other alternatives, including, when  
11 practicable, a standard permitting no discharge of pollutants.

12 (29) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or  
13 underground.

14 (b) The term does not apply to:

15 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

16 (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation  
17 or land application disposal system and the waters are not returned to state waters.

18 (30) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in  
19 combination with narrative information, that supports a finding as to whether a water body is achieving  
20 compliance with applicable water quality standards.

21 (31) "Threatened water body" means a water body or stream segment for which sufficient credible data  
22 and calculated increases in loads show that the water body or stream segment is fully supporting its designated  
23 uses but threatened for a particular designated use because of:

24 (a) proposed sources that are not subject to pollution prevention or control actions required by a  
25 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

26 (b) documented adverse pollution trends.

27 (32) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for  
28 point sources and load allocations for both nonpoint sources and natural background sources established at a  
29 level necessary to achieve compliance with applicable surface water quality standards.

30 (33) "Treatment works" means works, including sewage lagoons, installed for treating or holding

1 sewage, industrial wastes, or other wastes.

2 (34) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated  
3 to one of its existing or future point sources.

4 (35) "Water quality protection practices" means those activities, prohibitions, maintenance procedures,  
5 or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve  
6 the quality of state waters. Water quality protection practices include but are not limited to treatment  
7 requirements, standards of performance, effluent standards, and operating procedures and practices to control  
8 site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

9 (36) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or  
10 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

11 (37) "Watershed advisory group" means a group of individuals who wish to participate in an advisory  
12 capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development  
13 of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in  
14 an advisory capacity as provided in 75-5-704."

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16 **Section 2.** Section 75-5-403, MCA, is amended to read:

17 **"75-5-403. Denial or modification of permit -- time for review of permit application.** (1) The  
18 department shall review for completeness all applications for new permits within 60 days of the receipt of the  
19 initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness  
20 notice must note all major deficiency issues, based on the information submitted. The department and the  
21 applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is  
22 considered complete unless the applicant is notified of a deficiency within the appropriate review period.

23 (2) If the department denies an application for a permit, conditions a permit, or modifies a permit, the  
24 department shall give written notice of its action to the applicant or holder and the applicant or holder may  
25 request a hearing before the board, ~~in the manner stated in 75-5-614~~ using the procedure provided in subsection  
26 (3), for the purpose of petitioning the board to reverse or modify the action of the department. ~~The hearing must~~  
27 ~~be held within 30 days after receipt of written request.~~ After the hearing, the board shall affirm, modify, or reverse  
28 the action of the department. If the applicant or holder does not request a hearing before the board, modification  
29 of a permit is effective 30 days after receipt of notice by the applicant or holder unless the department specifies  
30 a later date. If the applicant or holder does request a hearing before the board, an order modifying the permit

1 is not effective until 20 days after receipt of notice of the action of the board.

2 (3) (a) Subject to subsection (3)(b), an interested person, other than an applicant or a permit holder, may  
3 request a hearing before the board on the department's final decision to issue or modify a permit. The request  
4 must be submitted to the board within 30 days of the department's decision, must be in writing, and must allege  
5 specific factual or legal errors in the decision. A hearing under this section is subject to the contested case  
6 provisions of Title 2, chapter 4, part 6. After the hearing, the board shall affirm, modify, or reverse the  
7 department's decision.

8 (b) If the department affords public notice of its proposed decision and provides an opportunity to  
9 comment, an interested person may not request a hearing unless, during the comment period, the person has  
10 submitted written comment that included the alleged factual or legal errors contained in the request for hearing.  
11 This requirement is not applicable if and to the extent that the final decision varies substantively from the  
12 proposed decision."

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